

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ERNESTO GRACIA CANTU,
Plaintiff,

v.

BIG LOTS STORES, INC.,
Defendants.

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CIVIL CASE NO. 7:21-cv-00136
JURY TRIAL DEMANDED

DEFENDANT BIG LOTS STORES, INC.'S
NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendant BIG LOTS STORES, INC. (hereinafter "BIG LOTS") removes to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Big Lots sets forth the following "short and plain statement of the grounds for removal."

I.
THE REMOVED CASE

1. The removed case is a civil action filed with the 398th Judicial District Court of Hidalgo County, Texas, on March 1, 2021, styled *Ernesto Gracia Cantu v. Big Lots Stores, Inc.*, under Cause No. C-0783-21-I (the "State Court Action").

II.
DOCUMENTS FROM REMOVED ACTION

2. Pursuant to FEDERAL RULE OF CIVIL PROCEDURE 81 and 28 U.S.C. § 1446(a), Defendant attaches the following documents to this Notice of Removal:

(a) A list of all parties in the case, their party type and current status;

- (b) a civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court, as required by 28 U.S.C. § 1446(a);
- (c) a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him/her;
- (d) A record of which parties have requested trial by jury; and
- (e) The name and address of the court from which the case is being removed.

III. REMOVAL PROCEDURE

3. Except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed to the United States District Courts for the district and division embracing the place where the action is pending. 28 U.S.C. § 1441. The McAllen Division of the Southern District Court of Texas is the United States district and division embracing Hidalgo County, Texas, and the county in which the State Court Action is pending.

4. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders in the State Court Action as of the date of this pleading are attached hereto as ***Exhibit "A"*** and incorporated herein for all purposes.

5. Defendant will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with

the Clerk of the 398th Judicial District Court, of Hidalgo County, Texas, where the State Court Action is currently pending.

IV.
REMOVAL IS TIMELY

6. According to the State Court Action file, Defendant BIG LOTS STORES, INC. was served with a copy of Plaintiff's Original Petition ("Petition") on March 9, 2021, via personal service.

7. The thirtieth day after service of the Petition on Defendant BIG LOTS STORES, INC. falls on April 8, 2021. As such, this Notice of Removal is being timely filed within the time limits specified in 28 U.S.C. § 1446(b).

V.
VENUE IS PROPER

8. The United States District Court for the Southern District of Texas – McAllen Division, is the proper venue for removal of the State Court Action pursuant to 28 U.S.C. § 1441(a) because the 398th Judicial District Court of Hidalgo County, Texas, is located within the jurisdiction of the United States District Court for the Southern District of Texas – McAllen Division.

VI.
DIVERSITY OF CITIZENSHIP EXISTS

9. This is a civil action relating to a negligence claim that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

10. As admitted in the Petition, Plaintiff is a resident of Brownsville, Cameron County, Texas and is domiciled there.¹

11. Defendant BIG LOTS STORES, INC., is a foreign Company organized and existing under the laws of the State of Ohio. Additionally, BIG LOTS STORES, INC.'s principal office is located at 4900 E. Dublin Granville Rd., Columbus, Ohio. Pursuant to 28 U.S.C. § 1332(c)(1), BIG LOTS STORES, INC. is not a citizen of the State of Texas.

12. Because the Plaintiff is a resident of the State of Texas and Defendant is not, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

VII.

THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

13. Plaintiff alleges in his Petition that he seeks "monetary relief of over \$100,000.00, and less than \$250,000.00."²

14. Based on the aforementioned facts, the State Court Action may be removed to this Court by BIG LOTS in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this is a civil action pending within the jurisdiction of the United States District Court for the Southern District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy as specifically pled by the Plaintiff, exceeds \$75,000, exclusive of interest and costs.

VIII.

FILING OF REMOVAL PAPERS

15. Pursuant to 28 U.S.C. § 1446(d), Big Lots is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this

¹ *Id.* Plaintiff's Original Petition at p. 3.

² *See*, "Plaintiff's Original Petition" p. 2.

Notice with the Clerk of the 398th Judicial District Court of Hidalgo County, Texas, in which this action was originally commenced.

IX.
CONCLUSION

16. Defendant Big Lots Stores, Inc. hereby removes the above-captioned action from the 398th Judicial District Court of Hidalgo County, Texas, and requests that further proceedings be conducted in the United States District Court for the Southern District of Texas – McAllen Division, as provided by law.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT
BIG LOTS STORES, INC.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on April 8, 2021, the foregoing *Notice of Removal* was electronically filed, as required by the United States District Court for the Southern District of Texas, using the Court's CM/ECF filing system, which will provide notice and a copy of this document, with attachments, to the following, who are indicated to be registered ECF filers in the United States District Court for the Southern District of Texas:

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Counsel for Plaintiff

- ☐ E-MAIL (service@ramiilaw.com)
- ☐ HAND DELIVERY
- ☐ FACSIMILE
- ☐ OVERNIGHT MAIL
- ☐ REGULAR, FIRST CLASS MAIL
- ☒ CM/ECF
- ☐ CERTIFIED MAIL/RETURN RECEIPT REQUESTED



Sara Krumholz